

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NANCY WAGNER, an individual,

Plaintiff,

v.

KING COUNTY, WASHINGTON; and DOES
2 through 10, inclusive,

Defendant.

CASE NO. C21-0508-JCC

ORDER

Pursuant to the parties' stipulation (Dkt. No. 9), the parties stipulate to the following:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: (a) Protected Health Information (“PHI”) as defined by the
4 Health Insurance Portability and Accountability Act (“HIPAA”); medical information, such as
5 medical records, medical treatment, medical diagnoses, and drug recommendations or
6 prescriptions; medical billing information; and investigations and statements to the extent they
7 include the same; (b) the financial status of Plaintiff and/or Defendant, including but not limited
8 to any non-public financial information such as tax records, profit and loss statements,
9 accounting documents, reports, or assessments; business and contractual relationships; financial
10 contracts; and investigations and statements related to the same, excluding any such documents
11 already in the public domain; (c) Contracts and other business documents subject to reasonable
12 confidentiality or non-disclosure agreements; leases; and any other document that the parties
13 stipulate is a confidential business document; (d) Information or documents obtained from third
14 parties falling into the foregoing categories; and (e) Confidential employment or personnel
15 information involving applicants, employees, or former employees of Defendant who are not
16 parties to this litigation, including but not limited to information regarding such individuals’
17 application, hiring, job performance, discipline, termination of employment, or compensation or
18 benefits.

19 3. SCOPE

20 The protections conferred by this agreement cover not only confidential material (as
21 defined above), but also (1) any information copied or extracted from confidential material; (2)
22 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
23 conversations, or presentations by parties or their counsel that might reveal confidential material.

24 However, the protections conferred by this agreement do not cover information that is in
25 the public domain or becomes part of the public domain through trial or otherwise.

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1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
5 the categories of persons and under the conditions described in this agreement. Confidential
6 material must be stored and maintained by a receiving party at a location and in a secure manner
7 that ensures that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the designating party, a receiving party may
10 disclose any confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees of
12 counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in house counsel) of the
14 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
15 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
16 designated;

17 (c) experts and consultants to whom disclosure is reasonably necessary for this
18 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the court, court personnel, and court reporters and their staff;

20 (e) copy or imaging services retained by counsel to assist in the duplication of
21 confidential material, provided that counsel for the party retaining the copy or imaging service
22 instructs the service not to disclose any confidential material to third parties and to immediately
23 return all originals and copies of any confidential material;

24 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
25 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
26 A), unless otherwise agreed by the designating party or ordered by the court. Pages of

1 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
2 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
3 under this agreement;

4 (g) the author or recipient of a document containing the information or a custodian or
5 other person who otherwise possessed or knew the information.

6 4.3 Filing Confidential Material. Before filing confidential material or discussing or
7 referencing such material in court filings, the filing party shall confer with the designating party,
8 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
9 remove the confidential designation, whether the document can be redacted, or whether a motion
10 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
11 designating party must identify the basis for sealing the specific confidential information at issue,
12 and the filing party shall include this basis in its motion to seal, along with any objection to
13 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
14 followed and the standards that will be applied when a party seeks permission from the court to
15 file material under seal. A party who seeks to maintain the confidentiality of its information
16 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
17 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
18 in accordance with the strong presumption of public access to the Court's files.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
21 or non-party that designates information or items for protection under this agreement must take
22 care to limit any such designation to specific material that qualifies under the appropriate
23 standards. The designating party must designate for protection only those parts of material,
24 documents, items, or oral or written communications that qualify, so that other portions of the
25 material, documents, items, or communications for which protection is not warranted are not
26 swept unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
2 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
3 unnecessarily encumber or delay the case development process or to impose unnecessary
4 expenses and burdens on other parties) expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it designated
6 for protection do not qualify for protection, the designating party must promptly notify all other
7 parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must
11 be clearly so designated before or when the material is disclosed or produced.

12 (a) Information in documentary form (*e.g.*, paper or electronic documents and
13 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
14 proceedings): the designating party must affix the word "CONFIDENTIAL" to each page that
15 contains confidential material. If only a portion or portions of the material on a page qualifies for
16 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
17 making appropriate markings in the margins).

18 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
19 participating non-parties must identify on the record, during the deposition or other pretrial
20 proceeding, all protected testimony, without prejudice to their right to so designate other
21 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
22 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
23 transcript, or exhibits thereto, as confidential. If a party or non-party desire to protect
24 confidential information at trial, the issue should be addressed during the pre-trial conference.

25 (c) Other tangible items: the producing party must affix in a prominent place on the
26 exterior of the container or containers in which the information or item is stored the word

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
2 the producing party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the designating party’s
5 right to secure protection under this agreement for such material. Upon timely correction of a
6 designation, the receiving party must make reasonable efforts to ensure that the material is
7 treated in accordance with the provisions of this agreement.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
10 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
12 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

15 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
16 regarding confidential designations without court involvement. Any motion regarding
17 confidential designations or for a protective order must include a certification, in the motion or in
18 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
19 conference with other affected parties in an effort to resolve the dispute without court action. The
20 certification must list the date, manner, and participants to the conference. A good faith effort to
21 confer requires a face-to-face meeting or a telephone conference.

22 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
23 intervention, the designating party may file and serve a motion to retain confidentiality under
24 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
25 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
26 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on

other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
2 provision is not intended to modify whatever procedure may be established in an e-discovery
3 order or agreement that provides for production without prior privilege review. The parties
4 agree to the entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth
5 herein.

6 10. NON-TERMINATION AND RETURN OF DOCUMENTS

7 Within 60 days after the termination of this action, including all appeals, each receiving
8 party must return all confidential material to the producing party, including all copies, extracts
9 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
10 destruction.

11 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
12 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
13 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
14 work product, even if such materials contain confidential material.

15 The confidentiality obligations imposed by this agreement shall remain in effect until a
16 designating party agrees otherwise in writing or a court orders otherwise.

17 It is so ORDERED.

18 It is further ORDERED that pursuant to Federal Rule of Evidence 502(d), the production
19 of any documents in this proceeding shall not, for the purposes of this proceeding or any other
20 federal or state proceeding, constitute a waiver by the producing party of any privilege applicable
21 to those documents, including the attorney-client privilege, attorney work-product protection, or
22 any other privilege or protection recognized by law.

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1 DATED this 23rd day of July 2021.

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5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued by the
King County Court, State of Washington on July 16, 2021 in the case of *Nancy Wagner v. King
County*, Case No. 21-cv-00508-JCC. I agree to comply with and to be bound by all the terms of
this Stipulated Protective Order and I understand and acknowledge that failure to so comply
could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that
I will not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____